IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	**Eric OWHADI et al.**	) Examiner:	T. T. Tran
		)	
Serial No.:	**10/652,892**	) Art Unit:	2179
		)	
Filed:	August 29, 2003	) Our Ref:	500201991-02US
		)	B-5223 621219-2
For:	"TECHNICAL SUPPORT	)	
	SYSTEMS AND METHODS	) Date:	May 5, 2008
	FOR USE IN PROVIDING	)	
	TECHNICAL SUPPORT"	) Re:	***Appeal to the Board of Appeals***

REPLY BRIEF

Commissioner for Patents

Sir:

This Brief is a timely reply to the Examiner's Answer mailed on March 5, 2008.

The Examiner and Appellants disagree whether a key limitation of the claimed invention is anticipated by Bereiter, whether claims 15-17 comply with the written description requirement, and whether claims 15-17 are directed to statutory subject matter. This Brief replies to the Examiner's answers to Appellants' arguments against the Bereiter reference and the Examiner's interpretation thereof.

REMARKS

The comments in Appellants' Brief on Appeal dated December 21, 2007 are incorporated herein by reference.

ARGUMENTS

The Examiner's interpretation of Bereiter is incorrect.

In their Brief, Appellants explain that contrary to the Examiner's assertion, Bereiter does not in fact teach the claimed "polling the support provider for a response to the query, on a repeated and automated basis, until a response becomes available or the support session is terminated." Presently the Examiner alleges to answer in Section I of the Arguments (page 12)

by asserting that "Bereiter discloses a data set indicative of a current operating state of the client machine is forwarded from the client machine to the support provider (e.g. server) for analysis. Based on this data set, the problem can be identified and provided to the client *or the new data set can be forwarded to the server for the response* (e.g. see col. 7 lines 17-35)." Appellants note that the Examiner's ability to leave out relevant details borders on the surgical in its tortuous precision, as he completely omits the fact that in Bereiter the first data set is forwarded from the client machine to the support provider at the request of the support provider, and furthermore so is the new data set - **at the specific request of the support provider**. The paragraph cited by the Examiner at col. 7 lines 17-35 makes this fact very clear. Thus, the Examiner further contention that "Clearly, *after* the client sends a data set to the server, the client is making a inquiry (e.g. polling) to the server asking to see if the problem can be identified or asking the server to see if the server needs any further information" is just as much of a *non sequitur* because in fact, and as very clearly disclosed, after Bereiter's client sends a data set to the server it does **nothing**. If the Examiner is attempting to assert that by answering the server's request for a data set, the client is making an inquiry, Appellants respectfully submit that this interpretation is even more creative and even more incorrect on its very face because by answering the server's request for a data set, the client is doing just that - answering the server's explicit request. The Examiner's insistence that "If the problem cannot be identified, the client repeats the inquiry with a new data set on an automated basis, until a response becomes available or the support session is terminated" is simply **wrong**. If the problem cannot be identified, the **server** repeats the inquiry - Bereiter could not possibly be any more clear on this point, and the Examiner's inability to comprehend this fact is truly stupefying. The data set in Bereiter is gathered by a diagnostic engine executing on the client machine under the control of the diagnostic center (i.e. support provider), and reading the Abstract alone informs the reader of this fundamental aspect of Bereiter:

> The diagnostic map is then executed by a diagnostic engine to generate a data set indicative of a current operating state of the client machine. This data set is forwarded from the client machine to the server for analysis. Based on the analysis performed at the server node, the data gathering process is repeated at the client

machine, iteratively, until given information is available to a user of the client machine to correct the given technical problem.

In Section II of the Arguments (page 13) the Examiner repeats the erroneous assertions from section I verbatim, and Appellants thus note that they have answered each of these contentions immediately above.

In section III of the Arguments (page 14) the Examiner offers the further contention that "As addressed above, the data gathering process is repeated to create a data set so that the client can repeat the inquiry with the new data set… *In that sense*, the client keeps polling the server with different sets of data for a response…" To this, Appellants can only ask: in what sense? Bereiter is very clear and explicit on its face that the data gathering process is repeated to create a data set <u>when the server fails to find a solution</u> - that is, *when the server informs the client* that it needs more data. Until the server informs the client that it needs more data, the client does nothing. There is no disclosure or hint in Bereiter that the client waits for a predetermined amount of time to receive a response from the server and then, if it has not received a solution to the problem, automatically gathers and sends a new data set to the server - and the Examiner's various Actions and present Answer are utterly silent as to where Bereiter allegedly discloses this, the one factum that would unequivocally support all of the Examiner's contentions. Appellants thus submit that in this sense, the Examiner's argument makes no sense at all.

The Examiner's written description rejection is based on an incorrect, and semantic, argument.

In section VII of the Arguments (page 15) the Examiner insists that claims 15-17 fail to comply with the written description requirement, this time offering the further creative argument that "the term media or medium is commonly defined in the industry to mean material which can store or transmit computer software, data, or both." From this, the Examiner leaps to the conclusion that "the term 'computer readable medium' includes both storage medium and transmission medium, this scope is different from what was disclosed by instant specification." Appellants respectfully submit that this contention is devoid of all merit - or sense.

At the outset, Appellants ask: what exactly is encompassed by the term "transmission medium?" Electromagnetic waves? Lasers? The ether? The Examiner's answer notwithstanding, the definition asserted by the Examiner himself is quite clear - **material** that can store or transmit computer software refers to a <u>material</u>. Thus, a floppy disk, or a CD, or a Flash card, are all materials that can store software and, because they can be placed in an envelope with postage affixed and dropped off with the Post Office, can also *transmit* said software. The Examiner appears not to have grasped this fact, as evidenced by his asserted confusion over the existence of a "transmission medium" which was not disclosed in the specification.

The Examiner's lack of statutory subject matter rejection is based on the same incorrect, semantic argument.

In section VIII of the Arguments (page 16) the Examiner reiterates his inexplicable belief that the software element on a computer readable medium recited in claim 15 "would reasonably be interpreted by one of ordinary skill in the art as software, per se" because "it is this 'software element' that is being claimed not the computer readable medium." This is wrong, and an egregious misstatement of the unambiguous language of claim 15: "A software element on a computer readable medium for use in…" What is claimed is a computer readable medium with a software element on it. The Examiner's "per se" interpretation is incorrect and irrelevant.

The Examiner now also asserts the "transmission medium" theory first introduced in section VII, and proceeds to further expound upon this theory by declaring such transmission media as being non-statutory subject matter(!): "in broad interpretation, the term 'medium' can include non-statutory subject matter (e.g., transmission medium as addressed above)." Appellants thus submit that, as discussed immediately above, this rejection on the Examiner's part is also baseless.
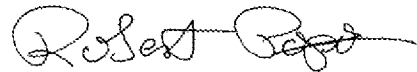
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CONCLUSION

For the many reasons advanced above, Appellants respectfully contend that each pending claim is patentable and reversal of all rejections and allowance of the case is respectfully solicited.

I hereby certify that this document is being transmitted to the Patent and Trademark Office via electronic filing.

Respectfully submitted,

May 5, 2008
(Date of Transmission)

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